

April 9, 2002

To: Supervisor Zev Yaroslavsky, Chair
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

STATE LEGISLATIVE UPDATE

Pursuit of County Position on Legislation

AB 2611 (Richman), as introduced on February 21, 2002, addresses several areas of reform to the current workers compensation system concerning qualifications, use and training of medical evaluators, the schedule for assessing the level of disability and factors used for determining compensation for an injury.

Existing law provides various procedures for certifying medical professionals who are qualified to evaluate injured workers' disability levels (Qualified Medical Evaluators or QMEs) and specifies the required training and experience for certification. AB 2611 would provide for an additional method of certification based on experience rather than examination. AB 2611 would also require ongoing training to help improve the quality of medical treatment and report writing. Existing law provides that the opinion of a pre-designated personal physician shall be presumed to be correct in relation to disability and the need for medical treatment. AB 2611 repeals this presumption of correctness.

Existing law provides a schedule for permanent disability ratings that includes ratings based on subjective complaints. AB 2611 would require use of the American Medical Association Guide to the Evaluation of Permanent Impairment when rating permanent disability. It would also preclude permanent disability ratings without objective medical findings.

Existing law does not define the burden of proof necessary for apportioning permanent

disability to other injuries or to non-industrial medical factors, such as a preexisting injury or illness. Current law also does not require the medical evaluator to address the issue of apportionment when reporting the level of permanent disability. AB 2611 would define the burden of proof necessary to determine questions of apportionment.

Existing law does not coordinate the payment of disability benefits thereby enabling an individual to earn more than 100 percent of the spendable income earned at the time of injury. Since disability benefits are tax-free, an individual on disability can receive payments that exceed their ordinary income. Existing law also does not limit the accumulation of permanent disability ratings over the lifetime of an individual. AB 2611 would coordinate disability benefits so that no more than 80 percent of spendable income earned at the time of injury is paid to any person and limits the accumulation of disability ratings to a total of 100 percent, except where one or more of the ratings is statutorily defined as 100 percent permanent disability. The bill also establishes a presumption that the disability for which an employee has received a prior permanent disability award still exists at the time of any subsequent industrial injury.

The Department of Human Resources recommends that the County support AB 2611 because it is consistent with previous positions the County has taken on legislation to reform the workers' compensation system such as AB 1808 (Richman), which would strengthen the training and certification requirements for a physician to qualify to be a QME and, AB 1809 (Richman), which requires the use of an Official Workers' Compensation Fee Schedule for all treatment provided on workers' compensation cases, and we concur. **Therefore, consistent with previous support for AB 1808 and AB 1809, our Sacramento advocates will be supporting AB 2611**, which is currently in the Assembly Committee on Insurance awaiting a hearing date.

AB 2700 (Mountjoy), as introduced on February 22, 2002, would relax the State's motorcycle helmet law by requiring helmet use only by a driver and a passenger who are 17 years of age or less. Existing law requires a driver and passenger of any age to wear a safety helmet when operating a motorcycle.

The Department of Health Services (DHS) indicates that the wearing of helmets has proven effective at reducing injuries and deaths related to motorcycle accidents. Passage of AB 2700 would increase the number of motorcycle related injuries and fatalities and result in increased, although indeterminable, medical costs for County hospitals because many of these future accident victims are likely to be treated at DHS facilities. Therefore, DHS recommends that the County oppose AB 2700, and we concur. AB 2700 is similar to County-opposed AB 1412 (Ducheny) which would have required safety helmets only for persons under 18 years of age and failed passage in 1998. **Consistent with County**

opposition to AB 1412, our Sacramento advocates will be opposing AB 2700. This bill is set for hearing in the Assembly Transportation Committee on April 15, 2002.

SB 1609 (Soto), as introduced on February 21, 2002, mandates that development of a blood-borne infectious disease by county health care workers is presumed to be contracted on the job, making them eligible for workers' compensation disability benefits and disability retirement. The bill defines health care workers as registered nurses, licensed vocational nurses, certified nurse aids, clinical laboratory technologists, dental hygienists, physicians, janitors or sanitation or housekeeping workers.

Current law, which the County opposed under AB 196 (Correa), mandates that safety members who develop a blood-borne infectious disease are presumed to have contracted it on the job, if the member can demonstrate that he or she was exposed to blood or blood products as a result of performance of job duties. It also provides that the disease shall in no case be attributed to any disease existing prior to its development or manifestation, and the presumption extends to a member for up to five years from termination of service. SB 1609 extends these provisions to health care workers.

The Department of Human Resources and my Compensation and Benefits staff recommend that the County oppose SB 1609, and we concur. **Opposition is consistent with existing County policy adopted by the Board on January 8, 2002, to oppose legislation that creates new presumptions by mandating that certain injuries and illnesses, diseases, or physical conditions an employee may develop are job-related for workers' compensation or service-connected disability retirement. Therefore, the County will be opposing SB 1609**, which is currently in the Senate Committee on Labor and Industrial Relations, with a hearing date set for April 10, 2002.

SB 1705 (Burton), provides that an acupuncturist can be appointed as a Qualified Medical Evaluator (QME) for the purpose of evaluating medical/disability issues for workers' compensation.

Existing law requires that the State Industrial Medical Council appoint physicians as Qualified Medical Evaluators to evaluate medical disability issues for workers' compensation. Currently, a medical doctor, a doctor of osteopathy, a doctor of chiropractic or a psychologist can be qualified as a QME. Acupuncturists are included as "physicians" for providing acupuncture treatment within the scope of their practice.

SB 1705 would expand the definition of physician for purposes of evaluating workers' compensation medical/disability issues to include acupuncturists. The Department of Human Resources (DHR) indicates that appointing an acupuncturist as a QME for

medical/disability evaluation goes beyond the scope of their practice as defined by State law. According to DHR, expanding the definition of a physician to include acupuncturists as QMEs is contrary to other legislation that the County supports, such as AB 1809 (Richman) which would strengthen the training and re-certification requirements for a physician to qualify to be a QME. **DHR recommends that SB 1705 be opposed, and we concur. Therefore, our Sacramento advocates will be opposing SB 1705.**

Although it is difficult to estimate the potential cost impact of having acupuncturists as QME's, DHR indicates that SB 1705 could increase permanent and temporary disability costs from \$500,000 to \$1 million per year. The bill is currently in the Senate Labor and Industrial Relations Committee, with a hearing date set for April 10, 2002.

SB 1766 (Ortiz), as introduced on February 21, 2002, would require each retail sale of a tobacco product be a vendor-assisted, face-to-face sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction in which the buyer is not in the seller's physical presence. A retailer may engage in a non-face-to-face sale if the retailer ensures that all applicable taxes are paid on each sale and that no tobacco product is sold or delivered to any person under 18 years of age.

The Department of Health Services (DHS) indicates that SB 1766 will reduce the incidence of youth smoking by further restricting access of minors to tobacco products. The requirement that all retail sales of tobacco products be face-to-face will allow age verification of retail sales and reduce the possibility of theft. Therefore, DHS recommends that the County support SB 1766, and we concur. **Consistent with County policy to support measures which deter consumption and reduce access to tobacco products, our Sacramento advocates will be supporting SB 1766.** SB 1766 is awaiting a hearing date in the Senate Judiciary Committee.

Status of County Interest Legislation

County-supported AB 2075 (Chavez) would expand the requirement for a convicted defendant to pay the reasonable costs incurred by a probation department when providing services to include payment for pretrial monitoring, investigation and reports, and post sentence investigations and reports prepared or conducted by a county probation department. The bill is scheduled for a hearing on April 16, 2002 in the Assembly Public Safety Committee.

County-supported AB 2238 (Dickerson), which would prohibit any State or local agency

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from posting on the internet the home address or telephone number of any public official who has been elected or appointed, is scheduled for hearing on April 16, 2002 in the Assembly Public Safety Committee.

County-supported AB 2591 (Hertzberg), which would extend the sunset date of the Community Law Enforcement and Recovery (CLEAR) anti-gang initiative in Los Angeles County from January 1, 2004 to January 1, 2005, and make legislative findings regarding the effectiveness of the initiative, is scheduled for hearing on April 10, 2002 in the Assembly Appropriations Committee.

We will continue to keep you advised of any new developments.

DEJ:GK
IGR:md

c: Executive Officer, Board of Supervisors
 County Counsel
 All Department Heads
 Legislative Strategist
 Local 660
 Coalition of County Unions
 California Contract Cities Association
 Independent Cities Association
 League of California Cities
 City Managers Associations
 Buddy Program Participants